

CHAPTER NO. 1016

HOUSE BILL NO. 2684

By Representatives Rhinehart, Phelan, Hood

Substituted for: Senate Bill No. 2753

By Senator Person

AN ACT to amend Tennessee Code Annotated, Title 55, relative to titling and registration of motor vehicles.

WHEREAS, on January 13, 1998, the Supreme Court of the United States entered a decision in *Fidelity Financial Services, Inc., v. Richard V. Fink, Trustee*, ____ U.S. ____, No. 96-1370 (January 13, 1998); and

WHEREAS, the Court held "that a transfer of a security interest is 'perfected' under Section 547(c)(3)(B) [of the bankruptcy code] on the date that the secured party has completed the steps necessary to perfect its interest, so that a creditor may invoke the enabling loan exception only by satisfying state law perfection requirements within the twenty (20) day period provided by the federal statute"; and

WHEREAS, it is imperative for the efficient commerce of the State of Tennessee and the protection of creditors that state law comply with the strict requirements of the bankruptcy code; and

WHEREAS, state law can define those steps which are necessary to perfect an interest within the twenty (20) days provided by the bankruptcy code; Now, Therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-3-126, is amended by adding the following new subsection:

() When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a first lienholder or his designee may file a notarized copy of an instrument creating and evidencing a lien or encumbrance on such motor vehicle with the Secretary of State and shall remit therewith a fee of ten dollars (\$10.00) for each lien to be filed. Such recording and filing shall constitute constructive notice of such lien against the motor vehicle described therein to creditors of the owner, subsequent purchasers and encumbrancers, except such liens as are by law dependent upon possession.

The constructive notice shall be effective from the date of the execution of the instrument creating and evidencing the lien or encumbrance if the same is filed as authorized herein within twenty (20) days after the date of the execution thereof. If the instrument is filed more than twenty (20) days after the execution thereof, the constructive notice shall date from the time of the filing of the instrument. Provided, that the filing of a lien under the provisions of this act by the lienholder and the payment of the fee therefor shall in no way relieve any person of the obligation of paying the fee now required by law for filing a lien to be evidenced on a certificate of title of a motor vehicle.

A lien filed under the provisions of this act shall automatically terminate after one hundred eighty (180) days or upon being perfected under other provisions of this section, whichever occurs first.

Whenever a lienholder or his designee files a lien under this act and later under other provisions of this section, the lien shall be presumed to be perfected at the time of the earliest filing.

The Secretary of State may require as a condition of filing that any document submitted for filing as a lien under this subsection include a cover form, prescribed by the Secretary of State, which identifies the name and address of each debtor, the name and address of the lienholder, the vehicle identification number of the motor vehicle, the date the document was executed, and the person and address to whom the acknowledgement of filing should be sent. Such cover form shall be considered part of the instrument creating and evidencing a lien or encumbrance on the motor vehicle described therein.

Upon request of any person, the Secretary of State may issue his certificate showing whether there is on file, on the date stated therein, any presently effective liens naming a particular debtor, giving the date and hour of filing of each such lien, and the vehicle identification number and the name of the lienholder. The fee for such a certificate shall be ten dollars (\$10.00). Upon request, the Secretary of State shall furnish a copy of any filed lien for a uniform fee of one dollar (\$1.00) per page.

The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by this subsection, including, without limitation, the power to promulgate necessary and appropriate rules and regulations consistent with this subsection, and the power to destroy any documents filed under this subsection two hundred seventy (270) days after the filing of such documents.

Notwithstanding any other provisions of the law to the contrary, the fees collected by the Secretary of State under this subsection shall be retained by the Secretary of State to offset costs associated with the administration and continued improvement of his recordkeeping functions.

SECTION 2. Tennessee Code Annotated, Section 55-3-126(b), is amended by deleting item (2) in its entirety and by substituting instead the following:

(2) The security interest is perfected as of the time of its creation if the delivery is completed within twenty (20) days thereafter. Otherwise, a security interest is perfected as of the date of delivery to the county clerk or the division of motor vehicles.

SECTION 3. Tennessee Code Annotated, Section 55-3-126, is amended by adding the following new subsection:

() The provisions of subsection () added by the provisions of this act shall be reviewed by the House and Senate Government Operations Committees by February 1, 2001. The House and Senate Government Operations Committees shall prepare a written report, and shall cause to be introduced any necessary legislation to implement the recommendations contained in such report. The House and Senate Government Operations Committees shall prepare a written report and any necessary legislation pursuant to such report every three (3) years beginning February 1, 2001, with such report to be

delivered to the Speaker of the House, the Speaker of the Senate, the Governor,
and the Secretary of State.

SECTION 4. This Act shall take effect on July 1, 1998, the public welfare
requiring it.

PASSED: April 29, 1998


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 18th day of May 1998


DON SUNDQUIST, GOVERNOR